

EXHIBIT 18

Excerpts from Deposition Transcript of Peter Arcidiacono

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:14-CV-00954

STUDENTS FOR FAIR
ADMISSIONS, INC.,

Plaintiffs,

vs.

UNIVERSITY OF NORTH
CAROLINA, et al.,

Defendants.

DEPOSITION
OF
PETER ARCIDIACONO

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TAKEN AT THE OFFICES OF:
THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
222 East Cameron Avenue
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1 substantial change in that, that would be one way
2 of evaluating that statement.

3 Q. And so is -- is your definition of a
4 predominant factor something that involves a
5 substantial change?

6 A. It would -- it would -- certainly a
7 substantial change would be necessary for that.

8 Q. So what would be both necessary and
9 sufficient for you to determine that something is
10 a predominant factor?

11 A. I think it's a bit in the eye of the
12 beholder there for sure so.

13 Q. With you being the beholder, how do you
14 define predominant factor?

15 A. Well, all I can say is I don't know
16 where the cutoff would be at which point I would
17 say it was a dominant factor, but when we're
18 talking about the levels of racial preferences
19 that I've seen here in the context of some of the
20 findings that I have, I would say it's a dominant
21 factor.

22 Q. Are you prepared to define what
23 predominant factor is?

24 A. No.

25 Q. And has anyone provided you with a

1 definition of predominant factor?

2 A. No.

3 Q. And in some of your reports you opine on
4 whether or not race is determinative of admissions
5 decisions. Do you agree with that?

6 A. Yes.

7 Q. Okay. What's your definition of
8 determinative?

9 A. The extent to which race was a deciding
10 factor in the admissions decision.

11 Q. Okay. And how do the terms predominant
12 factor and determinative factor differ for you?

13 A. I think that they're highly -- highly
14 relative. It's a predominant factor. It's been
15 implied that it's determinative for a set of
16 individuals.

17 Q. Okay. Do you view them as synonymous?

18 A. I believe one implies -- implies the
19 other.

20 Q. Okay. Which one implies the other?

21 A. If it's a predominant factor, then it is
22 going to be determinative or it is going to be
23 determinative for some set of individuals.

24 Q. And is the reverse true? Does
25 determinative mean that it's a predominant factor?

1 MR. STRAWBRIDGE: Object to the
2 form of the question.

3 A. It really depends on the context in
4 which determinative is used. There's a sense in
5 which race is always determinative to -- for
6 somebody. The question is, is that one applicant
7 or is it many applicants?

8 Q. (Mr. Fitzgerald) And what is your
9 interpretation of -- of what's a predominant
10 factor?

11 A. Sorry?

12 Q. In that context, if it's determinative
13 for one applicant but not the rest, would you view
14 race as being a predominant factor in the
15 admissions process?

16 A. No.

17 Q. Okay. What is the test for when it
18 becomes a predominant factor in the admissions
19 process for you?

20 A. There -- so in my view, you have to look
21 at how big of a -- a change that is. And that I
22 would say is that the changes we see, particularly
23 for out-of-state applicants shows that it's
24 dominant. That it passes that test in my -- in my
25 view.

1 particular race-neutral policies, and I would be
2 in charge of showing how those policies -- what
3 effects those policies have.

4 Q. Okay. And who constructed the models to
5 test those race-neutral policies that he would
6 propose?

7 A. Who constructed the models?

8 Q. Yeah.

9 A. Well, so he -- from when he was doing
10 race-neutral analysis based on solely applicants
11 to UNC, then he was using my models adjusted to
12 particular -- particular ways.

13 But there were also cases where he was
14 responding to some of the work that Hoxby did and
15 so taking some of Hoxby's models and then
16 expanding what was happening there.

17 Q. Okay. And so starting with the first
18 category, your models that were adjusted for his
19 work, who made the adjustments to those models?

20 A. Well, my team did.

21 Q. Okay. But who directed -- who directed
22 what adjustments should be made? Did that come
23 from Mr. Kahlenburg or come from you?

24 A. So Mr. Kahlenburg would say, "I -- I
25 want to give, you know, a SCS bump of this amount.

1 Tell me what happens in that case." And so we put
2 that in the model and show what would happen.

3 Q. Okay. So just -- so I can understand it
4 more simply myself, did the model change or was he
5 just saying put this different data input into the
6 model?

7 A. So the way these models work is that
8 there are -- we have them -- estimated the
9 probability of being admitted.

10 Q. Okay.

11 A. And there are coefficients associated
12 with different variables there. And those
13 different variables have different effects on the
14 probability of admission.

15 So when we talk about what's going to
16 happen here is that we -- instead of -- for
17 example, there's a coefficient on first generation
18 college. First generation college feeds into your
19 probability of being admitted and if we raise that
20 coefficient, that's going to change your
21 probability of being admitted.

22 So that's the extent of what's going on.
23 We're talking about raising particular
24 coefficients or identifying particular
25 combinations of characteristics and saying okay,

1 we're going to give everybody a bump of a
2 particular size.

3 Q. And who decided which coefficients to
4 raise?

5 A. Mr. Kahlenburg.

6 Q. Okay. And did you perform these --
7 these simulations yourself or people on your team?

8 A. Our team.

9 Q. Okay. Who was your team?

10 A. So ---

11 MR. STRAWBRIDGE: I just caution
12 the witness in answering this question. I don't
13 think the question calls for this. Do not -- do
14 not disclose the identity of any consulting
15 witness whose work you have not relied upon in
16 this case. And I just -- can we go off the record
17 for a second? I just have a ---

18 MR. FITZGERALD: Sure.

19 MR. STRAWBRIDGE: --- a question
20 because it's going to come up in the other
21 depositions.

22 (Off-record: 9:58 a.m. to 9:59 a.m.)

23 Q. (Mr. Fitzgerald) In terms of -- let me
24 talk to you about your work and also what it is
25 you expect to testify about at trial. Did you

1 come up with the types of race-neutral
2 alternatives to propose in this matter?

3 A. No.

4 Q. And did you determine the parameters of
5 each particular race-neutral alternative?

6 A. No.

7 Q. And I take it you're not planning to
8 opine as to whether the Univer -- simulations that
9 Mr. Kahlenburg had you -- had you and your team
10 perform are the right ones, correct?

11 A. Correct.

12 Q. And I take it that you're not opining as
13 to the results of these simulations, correct?

14 A. Correct.

15 Q. And I take it that you're not opining as
16 -- as to how the difference in diversity should be
17 evaluated, correct?

18 A. Correct.

19 Q. And I take it that you're not opining as
20 to whether a particular race-neutral alternative
21 is workable, correct?

22 A. Correct.

23 Q. And I take it you're not opining with
24 respect to how academic preparedness should be
25 measured, correct?

1 A. Correct.

2 Q. And I take it you're not opining as to
3 how the University should consider diversity,
4 correct?

5 A. Correct.

6 Q. And I take it you're not opining as to
7 whether it should consider socioeconomic diversity
8 alongside racial and ethnic diversity, correct?

9 A. Correct.

10 Q. And I take it you're not opining as to
11 whether a particular decline of racial diversity
12 is significant, for example, correct?

13 A. Correct.

14 Q. And you're not opining with respect to
15 how Carolina should evaluate the quality of its
16 admitted student class with respect to measures
17 that support its educational mission, correct?

18 MR. STRAWBRIDGE: Object to the
19 form of the question.

20 A. Could you say that one again?

21 Q. (Mr. Fitzgerald) Sure. I take it
22 you're not opining as to how Carolina should
23 evaluate the quality of its admitted students in
24 -- in -- with respect to its overall educational
25 mission, correct?

1 A. I am opining on the role of race in the
2 process, but that's the extent of it, yes.

3 Q. And you're not opining the metrics that
4 should be used to measure either academic
5 excellence or preparedness or diversity, correct?

6 A. Correct.

7 Q. And I take it you're not offering any
8 opinions with respect to Carolina's past efforts
9 to evaluate race-neutral alternatives, correct?

10 A. Correct.

11 Q. And I take it you're not offering any
12 opinions with respect to Carolina's Committee on
13 Race-Neutral Strategies' work, correct?

14 A. Correct.

15 Q. And I take it you're not offering any
16 opinion with respect to the topic of critical
17 mass, correct?

18 A. Correct.

19 Q. And I take it you're not offering any
20 opinion relating to the educational benefits of --
21 of diversity, correct?

22 A. Correct.

23 Q. And I take it you're not offering any
24 opinion as to what a matriculating class might
25 look like at Carolina as a result of any race-

1 Q. Okay. Are you familiar with a -- a
2 concordance table?

3 A. Yes.

4 Q. And what is that?

5 A. A concordance table gives you a map in
6 between different census scores.

7 Q. Okay. And could you have used a
8 concordance table to convert ACT scores to SAT
9 scores?

10 A. The overall score, yes.

11 Q. Okay. And why did you not do that?

12 A. Because we wanted to look at the scores
13 separately.

14 Q. Okay. And what's the value in that?

15 A. It provides more flexibility, for
16 example, of schools' value, verbal scores more
17 than math scores.

18 Q. Okay. And you referenced noisy data.
19 What do you mean by that?

20 A. Any time you take a test, there's going
21 to be variation that -- that happens -- happens
22 there, so it's not a perfect measure.

23 Q. Okay. Now, in your work, you created
24 what you call, I believe, an academic index by
25 taking a weighted average of the applicant's SAT

1 score and high school GPA. Is that correct?

2 A. For the decile analysis, yes.

3 Q. Okay. And why did you choose the index
4 that way?

5 A. I wanted to take into account all the
6 test scores and grades and see an actual way of --
7 of doing that.

8 Q. Okay. Is that a precedent you relied
9 upon for doing that?

10 A. Well, in the Harvard case, there is an
11 academic index and we had sort of a decile
12 analysis there. It seemed like an actual way of
13 approaching it.

14 Q. And was the academic index in Harvard
15 the same as the academic index you created for
16 Carolina?

17 A. No.

18 Q. Okay. What was the difference?

19 A. The weights are -- are different. It's
20 not an exact translation because of how they
21 report grades there, and they also incorporated
22 the SAT to the subject tests.

23 Q. Okay. And what why didn't you use the
24 same index you would use for Harvard?

25 A. Because the grades were recorded

1 differently -- differently there and we -- and we
2 went with the subject tests here.

3 Q. And why did you not include the SAT
4 subject tests here?

5 A. I don't believe they're even there,
6 so -- in the data.

7 Q. Okay. If they had been there, would you
8 have used them the way you did in Harvard?

9 A. Poss -- possibly. I'm not -- I'm not
10 sure. This was trying to look for something
11 simple. Harvard's formula is a complicated
12 formula.

13 Q. And why do you use a weighted average of
14 the SAT and GPA?

15 A. Well, we have to have some way of
16 combining them so put equal weight on each.

17 Q. Okay. And -- and why you determine to
18 put equal weight on each?

19 A. That just seemed like the simplest way
20 of explaining the -- the patterns.

21 Q. And did you run any models where there
22 were different weights placed on the SAT scores
23 versus the GPA?

24 A. Not that I recall.

25 Q. And just so I -- I make sure I

1 You could have collapsed a lot of those
2 coefficients into what would have been their
3 actual -- their actual GPA, and that would have
4 taken off a set of those coefficients.

5 Q. Okay. But your model did not do that?

6 A. Well, we don't have the missing
7 information. I'm saying that I could rewrite the
8 formula, use the estimated coefficients to assign
9 the GPAs and that would eliminate a bunch of those
10 coefficients as part of a -- as part of the
11 formula itself.

12 Q. As it stands now, your model four would
13 apply a formula that involved however many
14 coefficients are in the model assuming it's a
15 hundred and ten?

16 A. So that would be one way of expressing
17 the formula, yes.

18 Q. And in your in-state model number four,
19 and that's in your April rebuttal report -- and
20 you can decide whether you want to look at it or
21 not, but Exhibit 2. I don't know if you have a
22 copy of Exhibit 2. I don't think you do.

23 A. It's that one.

24 Q. So why don't you look at it. It's under
25 table 8.4.1.R. And that's at the back, I believe.

1 Q. (Mr. Fitzgerald) Do you -- you don't
2 contend in this case that admissions officers in
3 Carolina are specifically and intentionally
4 following a formula, do you?

5 A. Correct.

6 Q. Okay. And I take it you're not aware of
7 any formula, either explicit or implicit, that
8 correctly predicts all of Carolina's admission
9 decisions, correct?

10 A. Based on the observables, correct.

11 Q. And what share of admissions decisions
12 does a model need to predict correctly in order
13 for you to consider a system formulaic?

14 A. Well, I think that that is a threshold
15 that is in the eye of a -- eye of the beholder,
16 you know.

17 Q. And since you're the beholder who's
18 opining, what's the threshold for you?

19 A. You know, something above 90 percent.

20 Q. Above 90 percent? And what's your basis
21 for that statement?

22 A. It's my impression.

23 Q. Okay. Is it based upon any scientific
24 research?

25 A. No, there are not tests of formulas for

1 scores. So they're going to get factored in
2 through that coefficient in a way that whatever
3 relationship there is between the other observed
4 characteristics means that the residual part is
5 going to be uncorrelated.

6 Q. Okay. In that example, if the AP scores
7 are relevant but they're not specified as a
8 coefficient, the -- the correlation would be
9 picked up by other coefficients, like the SAT
10 score, correct?

11 A. Correct.

12 Q. And so in that example, the coefficient
13 of the SAT score may be off. It may a little too
14 high or a little too low because of the inter --
15 interaction with the unspecified AP grades,
16 correct?

17 A. It -- it reflects a number of things,
18 yes.

19 Q. You agree it's possible that URM
20 applicants could be stronger on some unobservable
21 dimensions than non-URM applicants, correct?

22 A. Of course.

23 Q. Okay. And do you agree that there are
24 some unobservables to you that are observable to
25 the UNC admissions office?

1 A. Yes.

2 Q. Okay. What would they be?

3 A. To the extent that the teacher
4 recommendation, the counselor recommendation are
5 not fully captured by the scoring of the
6 applicants, that would be an example.

7 You know, to the extent that the SA
8 score doesn't fully capture certain other things,
9 and then you have things like the AP scores that
10 may have influenced things as well.

11 Q. Okay. I'm going to keep changing
12 reports. Sorry to do this. I'm going to switch
13 back to the January report, Exhibit 1. And I'm
14 going to focus you on table 4.1, and I think
15 that's on page 40.

16 (Off-record discussion)

17 Q. Page 44, table 4.1. And that's entitled
18 "Magnitude of Racial Ethnic Preferences for In-
19 State Applicants." Do you see that?

20 A. Yes.

21 Q. Okay. In the first row, it talks about
22 an Asian American applicant, male, not first
23 generation college, correct?

24 A. Correct.

25 Q. And it shows original admit probability

1 determinative, but yet if you did the Shapley
2 decomposition, you would not find a big effect of
3 that because they're just not that big a portion
4 of the sample.

5 Q. But if you're looking at it across an
6 entire group, the Shapley decomposition would be
7 useful, correct?

8 A. Yeah. And that would tell you that
9 being white is not that important. You know, it's
10 -- it's not relevant to the question at hand of
11 how important race is for minority students.

12 Q. And -- but you'd agree with me a Shapley
13 decomposition would be useful in assuring -- in
14 determining the impact of particular factors
15 across the entire applicant pool, correct?

16 A. Correct.

17 Q. Okay. And prior to receiving the reply
18 reports, did you perform any Shap -- Shapley
19 decompositions yourself of your models?

20 A. No.

21 Q. And you're not intending to opine about
22 any Shapley decompositions of your models,
23 correct?

24 A. Well, you -- intending to opine that I
25 don't believe that's a way of proceeding. That's